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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,991	01/10/2007	Graham Francois Duirs	JAMES116.001APC	9007
20995 7590 04/08/2010 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER BUMGARNER, MELBA N				
ART UNIT 3767		PAPER NUMBER		
NOTIFICATION DATE 04/08/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
efiling@kmob.com
2ros@kmob.com

Office Action Summary

Application No.

10/572,991

Applicant(s)

DUIRS, GRAHAM FRANCOIS

Examiner

Melba Bumgarner

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 13-19, 32, 33 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13-19, 32, 33 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 4 and 14 are objected to because of the following informalities: in claim 4, it is not clear to which claim it is dependent, in claim 14, recitation of “the milk pressure” lacks sufficient antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5, 32, 33, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (2,244,027). Smith discloses a device capable of insertion through a teat orifice and into a teat streak canal, wherein the device 10 is configured to be held in position within the teat streak canal once inserted therein, such that the device has no protrusions penetrating outwards beyond an epithelium of the teat orifice (figure 2). The device is configured to deliver one or more treatment substances 13 to the teat streak canal, and for a period of time (column 2 line 29) covering period necessary for endogenous keratin plugs to form. The device is configured to act as a physical barrier to prevent the unwanted passage of substances through the teat streak canal. Smith discloses a method of treating an animal with the device comprising the step of inserting the device through into a teat orifice and into a teat streak canal during involution (column 2 line 26). Smith shows the further step of delivering one or more treatment substances to the teat streak canal (column 2 line 39). The method comprises a further step of retaining the device

within the teat streak canal for a time (column 2 line 30) which would be sufficient for the device to integrate with endogenous keratin to form a composite plug.

4. Claims 1, 2, 5, 13, 15-19, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Willard (6,221,060). Willard discloses a device capable of insertion through a teat orifice and into a teat streak canal, wherein the device is configured to be capable of being held in position within the teat streak canal once inserted therein, such that the device has no protrusions penetrating outwards beyond an epithelium of the teat orifice 10, for example figure 12 (column 4 line 39). The statements of intended use and other functional statements (for example, held in position within the teat streak canal once inserted therein) do not impose any further specific structural limitations in a device claim and are hence given little patentable weight since the device disclosed in the prior art is capable of being used as such. Willard discloses the device is configured to deliver one or more treatment substances (column 3 line 35) capable of delivery to the teat streak canal. The device is configured to act as a physical barrier via 26 to prevent the unwanted passage of substances. The device is configured to be capable of withstanding a build up in fluid pressure immediately post-drying off without the device being ejected. Willard shows the device includes one or more surface features 20 to enhance the retention of the device, and embodiments of one or more grooves, a spiral thread, and plurality of protrusions (figures 9, 14, 10); such surface features are configured so as to be capable of causing minimal dislodgment of keratin upon insertion and integrate with endogenous keratin. The device is configured such that it is capable of not extending into a teat cistern once inserted in the teat streak canal. The device is configured be capable of integrating with endogenous keratin to form a composite plug.

5. Claims 1-5 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sano et al. (6,756,048). Sano et al. disclose a device capable of insertion through a teat orifice and into a teat streak canal, wherein the device (figure 1) is configured to be capable of being held in position within the teat streak canal once inserted therein, such that the device has no protrusions penetrating outwards beyond an epithelium of the teat orifice. The statements of intended use and other functional statements (for example, held in position within the teat streak canal once inserted therein) do not impose any further specific structural limitations in a device claim and are hence given little patentable weight since the device disclosed in the prior art is capable of being used as such. Sano et al. disclose the device is configured to deliver one or more treatment substances (column 3 line 42) capable of delivery to the teat streak canal. The device is configured to deliver the one or more treatment substances for a period of time which is necessary for endogenous keratin plugs to form. The device is configured to degrade over time (column 6 line 10). The device is configured to act as a physical barrier to prevent the unwanted passage of substances. The device is configured to be dislodged, capable of being dislodged from the teat streak canal by the milk pressure generated.

Response to Arguments

6. Applicant's arguments with respect to the claims as amended in reply of February 17, 2010 have been considered but are moot in view of the new grounds of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is (571)272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melba Bumgarner/
Primary Examiner, Art Unit 3767